

**ANALYSIS OF THE AUTHORITY OF THE KPK IN CONTROLLING  
INVESTIGATIONS, INVESTIGATIONS AND PROSECUTION OF CORRUPTION  
CRIMINAL ACTS INVOLVING ACTIVE TNI INDIVIDUALS BASED ON ARTICLE 42  
OF LAW NUMBER 30 OF 2002 CONCERNING THE CORRUPTION ERADICATION  
COMMISSION**

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**ABSTRACT**

This study aims to analyze the authority Commission Corruption Eradication Commission (KPK) in investigations, inquiries and prosecutions criminal acts of corruption involving person The Indonesian National Army (TNI) is active. Focus The main research is based on Article 42 of Law Number 30 of 2002 concerning the Corruption Eradication Committee. This research is motivated by the challenges faced by the Corruption Eradication Committee in handling corruption cases involving active TNI members, considering existence difference jurisdiction between military courts and general courts. This study uses method legal normative approach legislation and case studies. The data used in this study are secondary data obtained from legal literature, legislation, documents official, and decisions - decisions relevant courts. The analysis was conducted using technique prescriptive to identify legal facts and data systematization based on theoretical framework that has been determined. The results of the study show that the KPK's authority in handling corruption cases involving active TNI personnel Still face various obstacles, especially related to the limitations jurisdiction and authority between the military courts and the Corruption Eradication Committee. Although Thus, Article 42 of Law No. 30 of 2002 provides a legal basis for the Corruption Eradication Committee to carry out investigation, inquiry, and prosecution of these cases. This study also found that the criminal law policy on the authority of the KPK needs to be strengthened so that it can handle corruption cases involving active TNI personnel in a way effective. The KPK has the authority to handle corruption cases involving active TNI personnel, but there needs to be more coordination Good between the Corruption Eradication Committee and agencies military to overcome constraint jurisdiction. This study suggests the need to revise the laws that regulate the authority of the Corruption Eradication Committee and the military courts to ensure the effectiveness of handling corruption cases involving active TNI personnel.

**Keywords:** KPK's authority, corruption, active TNI personnel, jurisdiction, military justice.

**INTRODUCTION**

A. Background of the problem

Indonesia is a developing, growing and advancing country penetrate hardness competition between developed countries that has control various international systems in the world. Indonesia implements a democratic system in the flow of national and state governance, but the capitalization system that Indonesia uses in managing economy and the Strong Wins system in the Legal and Political system. Indonesia has many great figures in running the government system

The level of the economy in Indonesia is still classified as low, still Lots uneven development in Indonesia. Indonesia is also still must take a hard time poor paying debt debt abroad which finally cut quota people in need government's helping hand. In conditions level this low economy is a lot dissatisfied society need his life so as to do various type way to satisfy lust his life, one of which is corruption.

Criminal acts are a form behavior always deviant exist and are attached to every form society, in the sense that criminal acts will always There is like disease and death that always repetitive like as with the seasons which always change from year to year, without exception criminal acts of corruption. The development of criminal acts of corruption in Indonesia has been

very worrying and has occurred in a way extends in almost all lines life society . From year to year, the development of criminal acts of corruption Keep going increase , good from number of cases that occurred and the number loss state finances and from the quality of the crimes committed is increasingly systematic as well as its scope covers all aspects life public .

Eradication efforts corruption crimes that have not gone according to expectations the clear also related to efforts prevention which is also still not sufficient hope society . In Indonesian positive law, there are actually regulations regarding efforts prevention and eradication criminal acts of corruption, namely in the Criminal Code (KUHP) which then in the circumstances urge it is determined Law Number 24 of 1960 concerning the Investigation , Prosecution and Examination of Criminal Acts of Corruption, which was later enacted in 1960, no exception criminal acts of corruption. The development of criminal acts of corruption in Indonesia has been very worrying and has occurred in a way extends in almost all lines life society . From year to year, the development of criminal acts of corruption Keep going increase , good from number of cases that occurred and the number loss state finances and from the quality of the crimes committed is increasingly systematic as well as its scope covers all aspects life society . Wirjono Prodjodikoro stated that criminal law is a legal regulation regarding criminal acts. The word "criminal" means something that is criminalized by the authorized agency . given ( dropped ) to a person as something that is not comfortable and not everyday given . The Indonesian Criminal Code has regulates the limitations that must be carried out by each Indonesian citizens so that the rules that have been set out in the form of legislation that can be applied in everyday life real according to purpose the formation of law.<sup>1</sup>

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Military crimes divided into two types : military crimes pure and military crimes mixture . The following is an explanation of the differences both types of crimes :

#### 1. Pure Military Crime

Military crimes purely a criminal act committed by members military and regulated in a way specifically by military law . These crimes are usually related to violations discipline , rules , and laws that only apply in a military environment.

Example:

- a. Desertion : Member military who leave their duties or his position without permission official .
- b. Insubordination : Refusing or disobeying orders from superiors directly .

<sup>1</sup>ibid. p.1

- c. Disciplinary Action : Violation of internal military regulations such as drug use , violation of military ethics , or inappropriate behavior in a military environment .
  - d. Jurisdiction : Military crimes pure tried by a military court that has authority specifically for handling violations that occur within the military environment.
2. Military Crimes Mixture
- Military crimes Mixed is a crime committed by members military but it is not criminal acts that are special regulated by military law . This crime is also a violation of general criminal law applicable to the community civil.
- Example:
- a. Corruption: Members military involved in acts of corruption, such as misuse of military funds for personal gain personal .
  - b. Persecution : Member the military that did action mistreatment of a person outside the military environment .
  - c. Theft : Member military involved in theft case both inside and outside the military environment .
  - d. Jurisdiction : Military crimes Mixed trials usually involve general courts and military courts . Legal proceedings can be conducted in courts general If violation it also involves public civil , or in court military If violation the fully be in the realm military

Each judicial environment has authority specific , specifically for judging things that have been determined laws for each environment. Determination authority to judge on matters specifically for each judicial environment, giving rise to legal issues regarding the absolute power for each environment to examine and try something case. What is the authority adjudicating for one judicial environment, automatically becomes absolute authority for the judicial environment concerned . Other judicial environments do not have the authority to examine and try it . Strictly speaking , what is the authority of the general court ? in a way absolute can only be examined and tried by general courts . Military courts or religious courts, in particular absolutely cannot examine and try him . Even though Constitution has determining the limits of authority of each environment, in reality disputes may arise as a result difference opinion that occurs between two or more judicial environment, each of them is of the opinion that the judicial environment concerned is the one that has the authority to examine and try the thing that happened<sup>2</sup>

In corruption cases involving suspects within the scope of general courts and military courts , are regulated in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP). The mechanism inspection connectivity is also regulated in Law Number 31 of 1997 concerning Military Justice ( Military Justice Law ). <sup>3</sup>The regulation mechanism connectivity in the Criminal Procedure Code and the Military Court Law is one of them procedure Handling criminal acts of corruption involving suspect who entered the room the scope of general justice and military justice is the formation permanent team . However , there are inspection case criminal acts of corruption involving public civilian and member military . Although existence mechanism connectivity , in fact Still happen dualism of power in terms of inspect criminal acts of corruption, which result in ambiguity authority to judge between the Corruption Crime Court and the Military Court to

<sup>2</sup>Yahya Harahap . Discussion Problems and Application of Criminal Procedure Code. (Jakarta. Sinar Graphics . 2000). p . 91

<sup>3</sup>Priska Rumat, Daniel F. Aling, Marchel Maramis . Legal Study of Corruption Crimes Committed by the Military . Journal, p . 5

examine as well as to cut off case corruption crimes that occur in the TNI environment. Currently, corruption crimes committed by the community civil examined at the Corruption Crimes Court , while Corruption crimes committed by TNI members are examined in the Military Court . For example, the East Jakarta Military Court sentenced Brigadier General TNI Teddy Hernayadi with the sentence lifelong live , Wednesday, November 30 2016. The panel of judges led by Brigadier General Deddy Suryanto read decision said . Teddy was proven commit budget corruption purchase tool main weapons systems ( alutsista ) 2010-2014 amounting to US\$ 12 million .<sup>4</sup> According to Mertokusumo , legal principles are divided into general legal principles and special legal principles . General legal principles is legal principles relating to all areas of law, such as the principle of restitutio in integrum, the principle of lex posteriori derogat legi priori, the principle that what is born looks right , for now must considered thus until decided (otherwise) by the court . Special legal principles function in more fields narrow such as in the fields of civil law , criminal law and so on , which often is description from general legal principles , such as pacta sunt servanda principle , principle consensualism , the principle stated in article 1977 BW, principle presumption of innocence .<sup>5</sup>

Behavior corruption crimes reviewed from aspect Aspect The structure is a special judicial institution that has the authority handle case corruption crimes . This is also regulated in Article 5 of Law Number 46 of 2009 concerning the Corruption Crime Court , which states that the court corruption is the only crime competent court examine , try and decide case criminal acts of corruption. The military justice institution that handles corruption cases is brave step to take consequences , but action the as if break through authority held corruption criminal justice institution . In the principle of lex consumer derogatory legion consume , the law that dominates eat provision other as We know that the crime of corruption is The objects and authorities of the Corruption Eradication Committee are more dominant .

In terms of the action taken constitutes a criminal act , it must be resolved according to the applicable mechanism without discrimination , by upholding tall values justice on the basis of “ everyone is treated equal before the law (equality before the law)”. From the principle of equality before the law, <sup>6</sup>and in accordance with Article 3 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. states that "The court judges according to the law without discriminating between people" which can be interpreted to mean that all form deviations committed by all agencies Good among civil and also military must charged sanctions in a way comprehensive , transparent , without view feathers and can be accounted for . which is carried out by all agencies Good among civil and also military must charged sanctions in a way comprehensive , transparent , without view feathers and can be accounted for .

Corruption is one of the biggest problems faced by the Indonesian nation . The practice of corruption is not only detrimental state finances , but also hampers development and destruction social order . To eradicate corruption, the Indonesian government has to form Commission Corruption Eradication Commission (KPK) based on Law Number 30 of 2002 concerning the

<sup>4</sup>Corruption of Defense Equipment , Brigadier General Teddy Sentenced Lifetime ”

<https://nasional.tempo.co/read/824397/korupsi> defense equipment - brigadier general -teddy- sentenced to life ( accessed on 23 august 2023, at 20.46)

<sup>5</sup> Sudikno Mertokusumo , Understanding the Law: An Introduction, 5th Edition , (Yogyakarta, Cahaya Atma Pustaka, 2016), p . 45

<sup>6</sup> Romly Atmasmita , Contemporary Criminal Justice System , (Jakarta, Kencana Prenada Media Group , 2010), p . 82.

Commission Eradication of Corruption. KPK was given broad authority to carry out investigation , inquiry and prosecution criminal acts of corruption. However , one of the challenge The biggest challenge facing the Corruption Eradication Committee is handling corruption cases involving person The Indonesian National Army (TNI) is active . Based on Article 42 of Law Number 30 of 2003

2002, the Corruption Eradication Committee has the authority to handle criminal acts of corruption involving apparatus law enforcement , including TNI members . Although However , the implementation of this authority is not always walk smooth Because existence difference jurisdiction between military courts and general courts .

TNI as an institution The military has its own judicial system regulated by Law Number 31 of 1997 concerning Military Justice . TNI members involved in criminal acts , including corruption, are generally tried by a military court . This gave rise to conflict authority when the Corruption Eradication Committee wants do investigation , inquiry and prosecution of active TNI members who are suspected involved in criminal acts of corruption.

This problem is getting worse complex remember existence concerns about the independence and effectiveness of military justice in handling corruption cases. Several cases show that military justice tend to be less transparent and independent compared to general courts . In addition, the legal process in military courts often considered slower and less strict than in general courts , thus giving rise to doubts about the accountability and justice provided .

authority to control investigation , inquiry and prosecution criminal acts of corruption involving active TNI personnel are important to analyze . How can the KPK carry out his authority in a way effective without violate jurisdiction of the military court ? What legal efforts can be taken to strengthen the position of the KPK in eradicating corruption involving active TNI member ? And how ideal legal arrangements for synergy between the KPK and the military courts can be created in handling corruption cases? These questions underlie the need for an in-depth analysis of the KPK's authority based on Article 42 of Law Number 30 of 2002 concerning the Commission Eradication of Corruption in the context Handling criminal acts of corruption involving active TNI personnel . This analysis is expected to provide practical solutions and recommendations. policies to increase the effectiveness of corruption eradication in Indonesia, especially those involving member military .

Based on description background behind on then the author is interested researching more in depth through this Thesis entitled "ANALYSIS OF THE AUTHORITY OF THE KPK IN CONTROLLING INVESTIGATIONS, INVESTIGATIONS AND PROSECUTION OF CORRUPTION CRIMINAL ACTS INVOLVING ACTIVE TNI INDIVIDUALS BASED ON ARTICLE 42 OF LAW NUMBER 30 OF 2002 CONCERNING THE CORRUPTION ERADICATION COMMISSION".

## B. Formulation of the problem

1. How is the authority Commission Corruption Eradication in Investigation perpetrator criminal acts of corruption against TNI personnel ?
2. How does criminal law policy relate to authority? Commission Eradication of Corruption involving active TNI personnel ?

### C. Theoretical Framework

Theoretical Framework is a description or a plan containing an explanation of all things that are used as research material based on the results from the research . Based on matter the so framework The theories used in this study are as follows :

#### 1. Theory of Legal Certainty

According to Utrecht, legal certainty has two meanings, namely first existence rules that are general make individual know action what can or cannot be done, and secondly in the form of legal security for individuals from arbitrariness government Because existence legal rules that are in general , individuals can know what can be charged or carried out by the state against individuals .<sup>7</sup>

The theory of legal certainty is one of the adherent a more positivistic stream see law as something autonomous or law in the form of regulation written . This means that because the law is autonomous , the purpose of the law is solely for legal certainty in legalizing certainty of rights and obligations somebody . Van Kant argued that the purpose of law is to maintain every human interest so that it is not disturbed and guaranteed.

According to Gustav Radbruch , the law must contains 3 ( three ) values identity , namely as follows :<sup>8</sup>

- a. The principle of legal certainty ( rechtmatigheid ) reviews this principle from corner juridical.
- b. The principle of legal justice ( gerechtigheid ), this principle reviews from corner philosophical , where Justice is equal rights for all people before the court.
- c. The principle of legal utility ( zwech) death or death or utility)

Teachings This legal certainty comes from from teachings Juridical-Dogmatic based on the flow thinking positivist in the legal world, which tends to see the law as something autonomous , independent , because for adherents This thinking , the law is nothing but a collection rules . For adherents In this stream , the purpose of law is none other than just ensure realization legal certainty . Legal certainty is realized by law with its nature which only creates a legal rule that is general . General properties from legal rules prove that the law does not aim to realize justice or benefits , but rather solely for legal certainty .

#### 2. Theory of Criminal Responsibility

An act that is against the law is not yet enough to bring down punishment on the side behavior against the law must There is a the maker ( dader ) is responsible for his actions . In principle The legality of Indonesian criminal law as regulated in Article 1 Paragraph (1) of the Criminal Code states that a person can only be notarized do criminal act if his actions the has been in accordance with the formulation in the criminal law .

According to Wirjono Prodjodikoro criminal responsibility is an act that must be accountable criminally against someone who commits criminal act . Moeljatno say that an

<sup>7</sup>Peter Mahmud Marzuki, Introduction to Legal Science, Jakarta , Kencana Pranada Media Group, 2008), p . 158.

<sup>8</sup> Dwika , " Justice from the Dimension of the Legal System " , <http://hukum.kompasiana.com> .(02/04/2011), accessed on 28 August 2023

act is said to be a criminal offense if has have elements action humans , is threatened / prohibited by law nature against the law is done through mistakes and actions the capable or can be accounted for . The definition of a crime is an act that violates Criminal regulations are threatened with punishment by law and are implemented by someone who is guilty , someone who is capable and accountable . If studied more Far meaning from this understanding, then inside it there is elements of crime or criminal acts , namely:

- a. The presence of elements action ;
- b. The presence of elements violation ;
- c. Threatened with punishment ;
- d. Done with error<sup>9</sup>

### 3. Theory of Authority

Authority or authority in terms of often equated with the Dutch term " bevoegdheid " which means authority or in power . In the Big Indonesian Dictionary as quoted by Kamal Hidjaz , the word authority equated with the word authority which is defined as the right and power to act , the power to make decision , command and delegate not quite enough answer to other people/bodies.<sup>10</sup> Philip M. Hadjon describe authority ( bevoegdheid ) as legal power ( rechtsmacht ), so that in the concept of public law , authority related to power.<sup>11</sup>

"According to Bagir Manan, power describes the right to act or do nothing something , authority means rights and obligations . Rights contain freedom to do or not to do action certain or according to another party to do action certain , whereas obligation load the need to do or not to do action certain .<sup>12</sup>

In theory, the authority have two kinds of nature , namely authority nature attributive and distributive . Authority attributive , namely authority that is given directly by statutory regulations , meaning authority the has regulated in the applicable laws and regulations , this authority is then referred to as the principle legality . Authority distributive , namely authority obtained on the basis of delegation authority from the body or other organs. All actions of government organs must based on the norm of authority , because the norm of authority is the basis for the legitimacy of actions The authority obtained from legislation is formal legality that gives legitimacy to actions government , therefore the authority concerned interrelated and cannot be separated from the principles legality as a basis authority government .

I Dewa Gede Atmadja , in his interpretation of the constitution, explains as follows : "According to the Indonesian constitutional system , there is a distinction between between authority authoritative and authority persuasive . Authority authoritative determined in a way constitutional , whereas authority persuasive on the contrary it is not authority constitutional in a way explicit ”.<sup>13</sup>

<sup>9</sup> Moeljatno , Principles of Criminal Law - Revised Edition , (Jakarta, Rineka Cipta, 2008), p. 58

<sup>10</sup>Kamal Hidjaz , Effectiveness Implementation Authority in the Regional Government System in Indonesia, (Makassar, Pustakafleksi , 2010), p . 35.

<sup>11</sup> Philipus M. Hadjon , On Authority , YURIKA, No. 5 & 6 Year XII, September- December , 1998, p . 1.

<sup>12</sup> Sadjijono , Main Chapters on Administrative Law , (Yogyakarta, Laksbang Pressindo , 2011), p . 58.

<sup>13</sup>Dewa Gede Atmadja , Interpretation of the Constitution in the Framework of Legal Socialization : The Pure and Consistent Implementation of the 1945 Constitution , Speech Introduction of Professor in the Field of Constitutional Law at the Faculty of Law, Udayana University, April 10, 1996, p.2.

**D. Research methods****1. Problem Approach**

To search for , find and analyze a problem that will be researched , used methods certain that are in accordance with the research needs . In accordance with the problems and objectives of this research, then The methods used in this study include approach legal normative . Normative legal research is research that places law as a building a system of norms.<sup>14</sup>

The normative system in question is principles , norms and rules from legislation , and the teachings of experts ( doctrine ). Approach legal normative in this research is carried out by analyzing theories , concepts , and legislation that have correlation with the problems discussed .

**2. Data Collection and Processing**

Researcher do a series of activities in data collection , which include : Literature study, namely collecting secondary data by recording , citing as well as reviewing bibliographic books related to the research material then organize it as a data study .

Next, the data that has been obtained then processing is carried out with the following activities :

- a. Description , namely the author describes research results are based on legal materials obtained Then analyze it .
- b. Prescription , namely identifying legal facts and eliminate materials that are not related to the research problem.
- c. systematization , namely by placing data according to a framework systematics limitation based on sequence of problems.

## RESEARCH RESULTS AND ANALYSIS OF THE AUTHORITY OF THE KPK IN CONTROLLING INVESTIGATIONS, INVESTIGATIONS AND PROSECUTION OF CORRUPTION CRIMINAL ACTS INVOLVING ACTIVE TNI INDIVIDUALS BASED ON ARTICLE 42 OF LAW NUMBER 30 OF 2002 CONCERNING THE CORRUPTION ERADICATION COMMISSION

### A. Authority Commission Eradication of Corruption in Investigations , Investigations of Perpetrators Corruption Crimes by TNI Members

Law enforcement against criminal acts of corruption in Indonesia, especially at the criminal stage investigation always a concern for many party . So far there are only three competent authority do investigations into criminal acts of corruption, namely the Prosecutor's Office , the Police and the Commission Eradication of Corruption ( hereinafter called the KPK). Third agency has a legal basis for doing so investigation into criminal acts of corruption. Criminal acts of corruption are not only carried out by the elite civil only, but TNI soldiers who are educated with discipline can also be involved as perpetrators criminal acts of corruption. For example, the case of the Corruption Eradication Committee (KPK) carrying out operation caught red-handed (OTT) in alleged cases bribery at the National Search and

<sup>14</sup>Mukti Fajar ND and Yulianto Achmad, Dualism of Normative and Empirical Legal Research , (Yogyakarta, Pustaka Pelajar , 2010), p . 34.

Rescue Agency ( Basarnas ). The KPK arrested 11 people and secured goods proof of Rp999.7 million . KPK next named five suspects , namely: Kabasarnas period 2021-2023 Marsdya Coordinator Administration Head of National Search and Rescue Agency Lieutenant Colonel ABC, President Commissioner of PT. Multi Grafika Cipta Sejati MG, President Director of PT. Intertekno Graphics Sejati MR, and the President Director of PT. Kindah Abadi Utama RA. Allegations bribe happen since 2021 in the implementation of several project tenders through LPSE. In 2023, Basarnas opening project tenders , including procurement equipment debris detector worth IDR 9.9 billion , procurement of Public Safety Diving Equipment worth IDR 17.4 billion , and procurement of Remotely Operated Vehicle (ROV) for KN SAR Ganesha ( multiyears 2023-2024) worth Rp89.9 billion . HA is suspected together and through ABC get mark bribes of around Rp88.3 billion . <sup>15</sup>Law enforcement to eradicate criminal acts of corruption committed in a conventional so far it has been proven experience various One of the obstacles is the enforcement of criminal law on corruption within the military. armed . For that it is necessary law enforcement methods outside usually through the formation of a special body that has authority broad , independent as well as free from any power in any effort eradication of corruption, the implementation of which is carried out optimally , intensively , effectively and professionally as well as sustainable .

Based on positivism , law teaches that law arises from an authorized power . Authority here in the sense of competence . Law in general strict determined by political superiority over political inferiority. And the concept such a thought emphasized by Notosusanto , that the division of government power Good

in a way vertical and also horizontally also has an impact on the type of law produced from authority Therefore , <sup>16</sup>the authority of the KPK was born based on Law Number 30 of 2002 concerning the Commission The eradication of corruption has been based on legal <sup>17</sup>legitimacy .

Authority outside the usual ones to have KPK institution in overcoming The crime of corruption has drawn pros and cons in various circles , one of them related to the authority of the Corruption Eradication Committee in carrying out investigation corruption in procurement defense equipment that involves TNI personnel clash with oath the soldier who must guard secret and obedient to superior as well as Military Justice Act . Based on provisions of Article 9 paragraph (1) of Law Number 31 of 1997 concerning Military Justice reads :

“Court Within the Scope Military Authorized To judge A crime committed by a person who at the time of committing the crime Criminal Acts Are Soldiers ”

However when reviewed based on The state losses resulting from the Kabarsarnas OTT corruption case are one of the... criteria corruption crimes that can be investigated and handled by the Corruption Eradication Committee. Based on provisions of Article 42 of Law Number 30 of 2002 concerning the Commission Eradication The Corruption Crime Act states that: “ The Corruption Crime Commission Corruption Eradication Authority Coordinating and Controlling Investigation , Inquiry and Prosecution of Corruption Crimes

<sup>15</sup>Cnnindonesia.Com, Accessed on April 26 , 2024, 07.00 WIB

<sup>16</sup>Commercial Court Procedure , (Jakarta, Cintya Press, 2005), p . 16

<sup>17</sup>Ibid, p.23

Carried Out Jointly by Persons Subject to Military Justice and General Justice" In the implementation of state administrative law , in a country it is based on legislation . as well as other implementing regulations , the function of which is create order administration organization statehood .

Among the laws that form the legal basis for this matter the existence of the Commission Institution Eradication Corruption Crimes Act (KPK), namely Law Number 30 of 2002 concerning the Corruption Commission Eradicator Criminal Act of Corruption. Which is substantial arrange The authority , duties and functions of the Corruption Eradication Committee in corruption Corruption Crimes in Indonesia and scope the authority and functions entrusted to the Corruption Eradication Committee are legal legitimacy in the name of state power, such as as it is scope Authority state administration given role to the legislative , executive and judicial powers , which are general overall source Power organizer administration state administration and also administration governance the commonly called state apparatus .

Implementation owned state apparatus , must be carried out in a consistent with applicable legal provisions , without exception including the implementation owned state apparatus , must be carried out in a consistent with applicable legal provisions , without exception including the implementation of authority carried out by the Corruption Eradication Committee based on legal legality . Based on Law Number 30 of 2002 concerning the Commission Eradicator Corruption Crime . Authority has an important position in constitutional law and administrative law. Considering how important this aspect is authority , then Lots expert mention that the authority is a core concept in constitutional law and administrative law The authority contained therein contains rights and obligations is ability to do specific legal action , which is intended to give rise to legal consequences , and includes the emergence and disappearance of legal consequences . As has been disclosed , Commission Corruption Eradication Commission (KPK) has set a number of official Basarnas as suspect in alleged case bribe procurement goods and services . They allegedly received a total of Rp. 88.3 billion from projects at Basarnas since 2021. The Corruption Eradication Committee has determined four individuals as suspects in this case, namely Koorsmin Head of National Search and Rescue Agency (ABC), Main Commissioner of PT Multi Grafika (MG), Main Director of PT Intertekno Graphics Sejati (MR), and President Director of PT Roni Aidil (RA). Three from they originate from sector private sector , and the Corruption Eradication Committee has imposed Article 5 paragraph (1) letter a or b, or Article 13 of Law Number 31 of 1999 concerning the Eradication of Corruption Criminal Acts of Corruption, as has amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication Criminal Act of Corruption in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code against them .<sup>18</sup>

Meaning chapter the then the Corruption Eradication Committee has the authority in this regard coordination , control the investigation , inquiry and prosecution process . As

<sup>18</sup> The Syakirin Ni'am and Bagus Santosa, "KPK Hands Over the Legal Process to the Head of Basarnas and its subordinates to the TNI Military Command Center ," Kompas.Com, 2023,

intended in Article 6 concerning the Duties, Authorities and Obligations of the KPK: The Commission Corruption Eradication has the following duties:

1. Coordination with authorized agencies do eradication criminal acts of corruption;
2. Supervision of authorized agencies do eradication criminal acts of corruption;
3. do investigation .

So keep paying attention and don't reduce it. the authority held by investigators other like The Prosecutor's Office and the Police , in accordance with the laws and regulations that form the legal basis for each. Basarnas is a civil organ that has authority in the field of search and rescue for the community . Basarnas is not a military organ even though his officials generally filled member military therefore he subject to civil law . Investigation into corruption cases that occurred at Basarnas should remain in the KPK and be controlled by the KPK.

#### B. Policy Regarding the KPK's Authority in Handling Corruption Cases Involving TNI personnel

Policy criminal also known as 'Criminal Policy' or 'Penal Policy'. Definition policy crime is part from criminal law which focuses on protecting society from "The branch of criminal science concerned with protecting against <sup>19</sup>crime ." According to Soedarto , implementing criminal policy means carrying out election from that's all Lots alternative , which is the most effective in business countermeasures In order to election alternative , then there is no absolutism in elections alternative In other words, the decision to demand or sue for a case is a policy problem . In the selection the contained meaning discretion that can be used to determine means What should chosen to address crime .<sup>20</sup> With that condition , the legal policy of the formation of Law No. 30 of 2002 places corruption as an extraordinary crime. With the category of extraordinary crime, law enforcement to eradicate corruption also requires extraordinary ways usual , namely by forming the KPK as a special body . The Commission Eradication of Corruption is A state institutions that carry out their duties and authorities nature independent free of 25 influences of any power . Formation This institution is based on the need to do eradication of corruption systematic , remembering criminal acts of corruption have classified as one of crime outside extraordinary crime. Far before This commission was born , has There is a number of commission or the team that preceded it , namely:

1. Corruption Eradication Team was formed based on Presidential Decree Number 228 of 1967.
2. Commission Team The four formed based on Presidential Decree Number 12 of 1970, which then in the same year carried the new name is the Anti-Corruption Committee .
3. Operations Team Order ( Opstib ) which was formed based on Presidential Instruction Number 9 of 1977.
4. Corruption Eradication Team was formed again in 1982 , although Presidential Decree regulating duties and authorities This team never published.

<sup>19</sup>Ali Zaidan, Criminal Law, (Jakarta, Sinar Grafika , 2015), p . 100

<sup>20</sup> Sudarto , A Dilemma in the Reformation of the Indonesian Criminal System ( Speech) Confirmation Acceptance of Professors at the Faculty of Law, NUDIP Semarang on Saturday, December 21, 1974), in Soekotjo Hardiwinoto (Ed), Collection of Speeches Confirmation Acceptance of Professors at UNDIP Semarang, Diponegoro University Publishing Agency , Semarang, 1995.

5. Commission Examiner Riches State Organizers formed based on Presidential Decree Number 127 of 1999.
6. Joint Team Eradication Corruption Crimes that were formed based on Regulation Government Regulation Number 19 of 2000.<sup>21</sup>

Whereas if We speak According to Bagir Manan, authority in legal language is not the same with power ( *machts* ). Power that describes the right to act or not to act . In law, authority at the same time means rights and obligations ( *rechten* ) *en plichten* ) . In relation to autonomy region , rights contain the meaning of the power to regulate yourself ( *zelfregelen* ) and manage themselves ( *zelfbesturen* ), while obligation in a way horizontal means the power to organize government as should be . Vertical means the power to execute government in one orderly bond state government in general overall<sup>22</sup>

As for when We pay attention to the KPK's legal policy in handling corruption cases involving person TNI in corruption cases involving suspects within the scope of general courts and military courts , are regulated in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP). The mechanism inspection connectivity is also regulated in Law Number 31 of 1997 concerning Military Justice ( Military Justice Law ). The regulation mechanism connectivity in the Criminal Procedure Code and the Military Court Law is one of them procedure Handling criminal acts of corruption involving suspect who entered the room the scope of general justice and military justice is the formation permanent team . However , there are inspection case criminal acts of corruption involving public civilian and member military . Some are checked through the mechanism connectivity or not checked without going through the mechanism connectivity mentioned . Examples of corruption cases involving suspect who entered the room the scope of general and military courts examined in a way connectivity

Connectivity is a justice system that is applied to a criminal act where between suspect or the accused happen inclusion ( *deelneming* ) or in a way together ( *mede* ) *father* ) between civilians and people with status military ( TNI soldiers ). Basis connectivity contained in article 22 of the Law Principles of Judicial Power , ( Law Number 14 of 1970). What is regulated in the Criminal Procedure Code is the implementation of Article 22 of Law Number 14 of 1970. However , far before the Criminal Procedure Code was born has decision together between the Minister of Justice , the Minister of Defense and Security , and the Attorney General, the Joint Decree ( No.B /16/XII/1971) is in the form of guidelines for implementing the provisions of Article 22 of Law Number 14 of 1970, concerning policy case connectivity .

In connection with the authority of the Corruption Eradication Committee in investigation , prosecution and prosecution case This criminal act of corruption of connectivity , authority also follows provisions of criminal procedure law that apply in several norms

<sup>21</sup>Waluyo Bambang, " Eradication Corruption Crimes (Strategy and Optimization )", (Jakarta, Sinar Grafika 2016). pp . 87-88.

<sup>22</sup>Bagir Manan , , Position Law Enforcement in the State System Republic of Indonesia, Law Magazine , Year XXI , Number 243 Ikahi , Jakarta, 2006

including the Criminal Procedure Code; Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption; Law Number 14 of 1985 concerning the Supreme Court ; and for its procedural law in a way special contained in the KPK Law.

Based on Article 284 paragraph (2) of the Criminal Procedure Code and reaffirmed in the provisions of Article 17 of the PP of the Criminal Procedure Code, the Corruption Eradication Committee is a body that has the authority as an investigator according to the provisions of Article 38, Article 39, Article 62 and their explanations. as well as explanation of the KPK Law. So that in handling case corruption crime , investigator as referred to in the provisions of Article 89 paragraph (3) of the Criminal Procedure Code and Article 198 paragraph (3) already includes the Corruption Eradication Committee. As an investigator In addition , the existence of the Corruption Eradication Committee (KPK) is also in accordance with the provisions of Article 7 of the Joint Decree of the Minister of Defense and the Minister of Justice Number K.10/M/XII/1993 and Number: M.57.PR.09.03/1983, which can be included in the Permanent Team for cases connectivity .

### C. Research Analysis

In general formal legal Commission The Corruption Eradication Commission (KPK) has the authority to handle corruption cases in government agencies. wherever , including military it is in fact explicitly explained in Articles 6 to 15, the authority process corruption in agencies wherever , including military . So actually What the Corruption Eradication Committee (KPK) has done is in accordance with the KPK Law, the KPK can ignore it military justice mechanism based on the principle of *lex specialist derogat lex generalis* ( special laws ) to put aside ( general law ) . As We know , the military justice system as regulated in Law Number 31 of 1997 concerning Military Justice is a legal system exclusive to soldiers military involved in the action crime . Often becomes a means impunity for those who do criminal act .

Therefore , the Corruption Eradication Committee should be aware of this. Article 65 paragraph (2) of the TNI Law itself reads " Soldier bow down to the military judicial authority in the case violation of military criminal law and subject to the authority of the general judiciary in the case violation of general criminal law regulated by law . So that two suspects were named Head of Basarnas and Koorsmin Head of National Search and Rescue Agency together three public civil is the right decision . Because in the case of bribery that must be to suspect giver bribery and recipient bribery . It just becomes strange if the Corruption Eradication Committee does not suspect Kabasarnas and his men even though in this case they are together suspected as the recipient bribery . Those who have become suspects cannot argue that the determination suspects against them can only be carried out by investigators at the TNI institution , because This allegation of corruption does not exist the relation The same once with the TNI institution and military interests .

#### 1. According to the KPK ( Commission Eradication of Corruption)

KPK is an institution independent formed based on Law No. 30 of 2002 concerning the Commission Eradication Corruption Crimes . The main function of the KPK is to improve efforts eradication of corruption through coordination with authorized agencies ,

supervision of agencies implementing eradication of corruption, investigation , inquiry , and prosecution of corruption crimes . Elements of corruption crimes include :

- a. Loss State Finance Actions that cause loss to finance or economy country. Abuse Authority : Actions carried out by state administrators by abusing their authority his authority .
  - b. Gratification Reception present or a gift that can be considered a bribe that influences policy or decisions taken by state administrators .
  - c. System of Blackmail and Deception The act of asking for or accept something with a promise or threats that are not in accordance with applicable regulations .
  - d. Procedure Case Handling by KPK
    - 1) Investigation : Stage The initial goal is to search proof quite a start .
    - 2) Investigation : Conducted if there is proof a good start , aiming to find and collect evidence to establish suspect.
    - 3) Prosecution: Carried out if investigation has been completed and found sufficient evidence to be brought to court .
2. According to the Prosecutor's Office
- The prosecutor's office is an institution the government is tasked with implementing state power in the field of prosecution as well as authority other based on law . The role of the Prosecutor's Office in handling criminal acts including investigation , inquiry and prosecution , in particular general and special crimes such as corruption.

Stages of the Case Handling Process at the Prosecutor's Office :

- a. Investigation and Investigation : Investigation is conducted to search for and find events that are suspected to be criminal acts . If found proof sufficient start , followed by investigation to gather sufficient evidence to establish suspect.
  - b. Prosecution: After the investigation is completed, the prosecutor general compile letter indictment based on the evidence that exists and brings case to court for trial. Execution: Implementation of the decision the court that has has permanent legal force.
3. According to the Law Military
- Handling of cases involving member military regulated in Law Number 31 of 1997 concerning Military Courts . The Military Court is a court that has the authority examine , try and decide criminal cases committed by members military . Elements of military crimes including :
- a. Military Crimes : Offenses related to military duties and functions , including desertion , insubordination , and other crimes regulated in the Military Criminal Code ( KUHPM ).
  - b. General Crimes: Crimes committed by members military but included in the category general crimes , such as corruption .
  - c. Procedure Handling of Cases in Military Courts:
    - 1) Investigation and Probe : Conducted by the Military Police . The purpose of the investigation is to collect sufficient and conclusive evidence suspect.
    - 2) Prosecution: Conducted by the Prosecutor The military , which serves as prosecutor in court military.
    - 3) Court: Case will tried in a Military Court with a military judge deciding case based on evidence and applicable law .

Integration of the Corruption Eradication Committee (KPK) and the Prosecutor's Office in Military Cases In several corruption cases involving member military and civilian , the Corruption Eradication Committee can work same as the Prosecutor's Office and agencies military to handle case This is done through coordination and supervision to ensure that cases are handled in a way fair and transparent in accordance with applicable laws. This presentation provides an overview comprehensive information about handling cases according to the Corruption Eradication Committee, the Prosecutor's Office , and the Law Military , as well as how each agency carry out functions and responsibilities his/her answer in handling criminal act .

Eradication Committee (KPK) has the authority to handle corruption cases involving active TNI personnel based on Article 42 of Law Number. 30

In 2002 , however , the implementation of this authority is still face various obstacles , especially related to limitations jurisdiction between the Corruption Eradication Committee and the military courts . To overcome This obstacle requires a revision of the law and improvement coordination between the Corruption Eradication Committee and agencies military .

## CLOSING

### A. Conclusion

Based on studies and research conducted by the author, as well as descriptions in chapters previously then the author draws conclusion:

The authority and functions entrusted to the Corruption Eradication Committee in investigations perpetrators of corruption crimes by TNI members Corruption (KPK) has the authority to handle corruption cases in institutions wherever , including military it is in fact explicitly explained in Articles 6 to 15 of Law Number 30 of 2022 concerning the Corruption Eradication Committee, so the Corruption Eradication Committee has the authority process corruption in agencies wherever , including military . So actually What the Corruption Eradication Committee (KPK) has done is in accordance with the KPK Law, the KPK can ignore it military justice mechanism based on *the principle of lex specialist derogat lex generalis* , and also Article 42 of Law Number 30 of 2002 concerning the Commission Eradication The Corruption Crimes Commission states that Corruption Eradication Authority Coordinating and Controlling Investigation , Inquiry and Prosecution of Corruption Crimes Carried Out Jointly by Subject Persons

Military Courts and General Courts. This means continuing to coordinate , control the investigation , inquiry and prosecution process . As intended in Article 6 on Duties, Authorities and Obligations KPKThe KPK's legal policy in handling corruption cases involving... person TNI in corruption cases involving suspects within the scope of general justice and judicial justice

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